IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1042 of 1999

Between:

Joseph Thomas, S/o.late S.Thomas,

Aged 45 years, Occ: Clerk, C.M.E.Department,

Visakhapatnam Port Trust, Visakhapatnam

..... PETITIONER

AND

1. The Chairman, Visakhapatnam Port Trust,

Visakhapatnam

2. The Chief Mechanical Engineer,

Visakhapatnam Port Trust, Visakhapatnam

3. The Chief Medical Officer,

Visakhapatnam Port Trust, Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents as arbitrary, illegal, violative of Judgment of High Court in W.P.No.4959/84 dated 10.12.86 and consequently direct the respondents to consider for promotion from 'Greaser' to higher post i.e. Fitter Grade II/Clerk w.e.f.Juniors are promoted i.e. in the year 1975 and taking into consideration of the said promotion and length of service rendered as a clerk from 1973 to 1986 and from 1991 to consider the promotion to Senior Assistant.

Counsel for the Petitioner: MR.T.BHEEMSEN & T.V.PRANAI KUMAR

Counsel for the Respondent Nos.1 to 3: MR.P.SRI RAGHU RAM

The Court made the following:

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ORDER:

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This writ petition is filed seeking Mandamus declaring the action of the respondents in not considering the promotion of the petitioner from the post of Greaser to the higher post i.e. Fitter Grade II/Clerk from the date when his juniors were promoted, as arbitrary and illegal.

2. The petitioner joined in the respondent Organisation on 18.04.1966 as Khalasi. In the year 1969 he was promoted as a Greaser. While so, in the year 1973 direct recruitment had taken place for the post of Clerks. The petitioner applied as Scheduled Caste candidate, selected and joined as L.D.C. on 13.07.1973. While so, on 26.04.1982 the petitioner was suspended from service on the ground that he obtained employment as L.D.C. by producing a false caste certificate. After conducting a detailed enquiry into the matter, the petitioner was removed from service on 03.03.1984.

3. Aggrieved by the same, the petitioner has filed W.P.No.4959 of 1984. However, during pendency of the said writ petition, the Revision Petition of the petitioner was allowed and he was designated as Greaser. This order was also challenged in the said writ petition by making an amendment. The said Writ Petition No.4959 of 1984 was disposed of on 10.12.1986 as under:

> "It may be noticed further that under the impugned order the petitioner has been put back in the post of 'Greaser', from which post he obtained an undue promotion on the basis of a false claim and the false certificate produced by him in support of that claim. It is evident that the impugned order does not preclude the petitioner from being promoted in the normal course as a general candidate i.e., in the open-competition quota. The respondents shall examine whether the petitioner was entitled to be promoted to higher post from the post of 'Greaser' as a member of open-competition quota, and if it is so found, he may be promoted in his due turn with effect from such date as he is found entitled to. In otherwords, the impugned order in no way prejudices his rights as a 'non-scheduled caste' employee (This direction is made in view of the particular facts of this case,

since the petitioner claims that he was an orphan; that he was adopted by Christian parents, and that he was admitted to school by his adoptive father)."

4. However, a clarification of the said order passed by this Court on 10.12.1986 in W.P.No.4959 of 1984 was sought. The same was clarified by an order dated 20.03.1987, which reads as under:

> "ORDER: The only clarification that can be made is that on reversion to the post of 'Greaser', the petitioner shall be placed at the top of the seniority list in 'Greaser' category. On that basis he shall be considered for future promotion, whether in the mechanical line or electrical line in accordance with the Rules and in accordance with his seniority."

5. Now the case of the petitioner is that though he was reinstated as a Greaser, he is not promoted treating the entire service rendered by him in the cadre of L.D.C. If the entire service rendered by him in the cadre of L.D.C. is taken into consideration right from 1969 till 1984, he would be senior in the cadre of Greaser even to those persons who were already promoted even before the removal order was passed against him. Therefore, non-consideration of the case of the petitioner for further promotion on par with his juniors, who were already promoted when he was working as L.D.C., is arbitrary and illegal.

6. A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. In the counter affidavit para-6, it is stated that the request of the petitioner to consider him for promotion to the higher category in the clerical line i.e. as Senior Assistant, counting his seniority from 1975 cannot be accepted for the following reasons:

1. The seniority in the Clerical line is separate from that of mechanical line.

2. The petitioner was appointed to the post of Clerk only 22-5-91 in Mechanical Department and his seniority counts for promotion to the higher post in Clerical line only from the date of his appointment as Clerk.

3. Had the petitioner continued in the post in mechanical line, i.e. Fitter category, his seniority would have been counted for further promotion in mechanical line,

from the date of his re-appointment as Greaser, with effect from 29.1.87 made in pursuance of High Courts orders.

4. Nowhere in the Court orders it was mentioned that his past services prior to his re-appointment as Greaser should be counted for seniority and promotion. On the other hand, it was clarified in the Court order that he shall be placed at the top of the seniority list in the Greaser category and shall be entitled for promotion to the higher post from the Greaser only in his due turn with effect from such date as he is entitled to.

7. Once a person is reverted to a particular post, as a measure of punishment, even if he is asked to take the first rank in the reverted post, he has to compete himself for the future promotion only on the basis of the seniority given after his reversion. In fact the order clarified on 20.03.1987 in W.P.No.4959 of 1984, makes the things very clear. Therefore, the claim of the petitioner is only a speculative devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

dsr

ASSISTANT REGISTRAR

To:

1. The Chairman, Visakhapatnam Port Trust,

Visakhapatnam

2. The Chief Mechanical Engineer,

Visakhapatnam Port Trust, Visakhapatnam

3. The Chief Medical Officer, Visakhapatnam

Port Trust, Visakhapatnam

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